UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Chief Bankruptcy Judge
Sacramento, California

September 27, 2004 at 9:00 a.m.

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1. 04-24502-A-7 ROBERT SACHS
UST #2

CONT. HEARING - UNITED STATES TRUSTEE'S MOTION FOR EXTENSION OF TIME FOR FILING A MOTION TO DISMISS OR A COMPLAINT OBJECTING TO DEBTOR'S DISCHARGE
8-9-04 [34]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the debtor, the creditors, and all other potential respondents to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of these respondents are entered and the matter will be resolved without oral argument.

The United States Trustee requests an order extending the last date to either file a motion to dismiss pursuant to 11 U.S.C. § 707(b) or object to the debtor's discharge. The United States Trustee filed this motion to extend time before the original time to file an objection to discharge expired as required by Fed.R.Bankr.P. 4004.

The motion is based on the fact that the debtor's property, held in co-tenancy, appears to be undervalued. On August 26, 2003, Michelle R. Long filed a petition for relief under chapter 7. On her schedules, Ms. Long stated a co-tenancy in 5300 Divot Circle, in Fair Oaks, California, with a current market value of $310,000 and a secured claim of $295,163. On December 29, 2003, Fairbanks Capital Corporation was granted relief from stay as to the chapter 7 trustee. On February 23, 2004, Ms. Long's case was closed as a no-asset case.

On April 30, 2004, the debtor filed a chapter 7 petition. John R. Roberts was appointed as the chapter 7 trustee. The debtor scheduled a co-tenancy in 5300 Divot Circle, in Fair Oaks, California, with a current market value of $310,000 and a secured claim of $296,000. On May 17, 2004, Fairbanks Capital Corporation was granted relief from the automatic stay.

On June 25, 2004, the chapter 7 trustee filed an amendment changing the case to an asset case, and later filed an application to employ a real estate agent on July 27, 2004. An Exclusive Agency Listing Agreement showed the listing price at $439,000.

Because the subject property appears to be undervalued in both of the above cases, the United States Trustee requests an additional 60 days to ascertain the value the trustee will potentially receive from the subject property.

The motion will be granted. The last day to file a motion to dismiss or object to the debtor's discharge will be extended to October 8, 2004.

2. 03-33703-A-7 WILLIAM/CHERYLE KLARENBACH — HEARING - MOTION FOR APPROVAL OF SALE OF REAL PROPERTY FREE AND CLEAR OF LIENS AND OF COMPENSATION OF REAL ESTATE BROKER 9-7-04 [55]
HSM #2

Tentative Ruling: The motion will be granted.

The chapter 7 trustee seeks to sell the real property belonging to the bankruptcy estate to Roland Bennett for $310,000. The property is located at 24580 Dale Road, in Corning, California. The trustee requests the sale be subject to overbids at the time of hearing on this motion.

Under the purchase agreement, the bankruptcy estate will pay the following:

1) liens held by the Tehama County Tax Collector for accrued real property taxes at the close of escrow (estimated at $4,600);

2) a first deed of trust held by Option One Mortgage (estimated at $212,363.70 at the time of filing);

3) six percent (6%) real estate commissions; and

4) other reasonable and necessary costs and expenses of closing.

The debtors have agreed that the proceeds of the sale will be divided equally between the trustee and the debtors, notwithstanding the debtors' claimed homestead exemption. In addition, the trustee will receive an additional $7,400 for the debtors' buy-back of other non-exempt assets in this case.

11 U.S.C. § 363(f) allows trustees to sell property of the estate free and clear of liens only if: (1) permitted by non-bankruptcy law; (2) the lien-holders consent to such sale; (3) the proposed purchase price exceeds the total value of the liens against the property; (4) a good faith dispute concerning the validity of the liens exists; or (5) in a judicial proceeding, the lien-holders are compelled to accept a money satisfaction of their interest.

The trustee seeks approval of sale free and clear of liens on the basis that the proposed purchase price exceeds the liens against the property. However, because all liens will be paid in full from escrow, it is unnecessary to sell free and clear of them.

Accordingly, the motion is granted pursuant to 11 U.S.C. § 363(b) subject to overbids at the hearing. After paying such liens and paying the debtors the agreed portion of their homestead exemptions, the remainder will be held by the trustee for the benefit of the estate.

3. 04-23504-A-11 RICOR — HEARING - MOTION TO DISMISS CASE BY DEBTOR 8-27-04 [17]
DF #1

Tentative Ruling: The debtor, a corporation, filed a petition for relief under chapter 11 on April 4, 2004. An affiliate, Ricor Racing and Development,

a limited partnership, also filed a petition for relief under chapter 11 on April 4, 2004. All of the debtor's stock is solely owned by Donald and Georgina Richardson. The debtor is the general partner of Ricor Racing and Development. The Richardsons filed a joint petition for relief under chapter 11 on November 3, 2003.

The debtor derives its sole source of revenue from its contract with Ricor Racing and Development for management fees. The debtor originally filed its petition as a result of pending state court litigation. A complaint was being prosecuted by various limited partners of Ricor Racing and Development against Mr. Richardson, Ricor Racing and Development, and the debtor. The state court litigation alleges causes of action against Mr. Richardson for breach of contract, fraud, alter ego liability, and dissolution of Ricor Racing and Development. In addition, a related adversary proceeding was brought against Mr. Richardson pursuant to 11 U.S.C. § 523(a)(2) and (4).

Ricor Racing and Development owns various patents involving shock absorber technology invented by Mr. Richardson. The pending state case has inhibited Ricor Racing and Development's ability to contract with both existing and potential licensees, who fear possible dissolution of Ricor Racing and Development. As a result, Ricor Racing and Development was unable to pay its outstanding claims to Ricor Inc. for management fees. Ricor Inc., in turn, has been unable to pay its creditors.

The debtor's scheduled debts consist of its obligations to Mr. Richardson for management fees and claims arising from the pending state court litigation.

The Richardsons have brought a motion to approve a compromise with the plaintiff-limited partners and to convert their petition to one under chapter 13. Under the agreement, the plaintiffs plan to dismiss both the adversary proceeding and the state court litigation upon approval of the compromise. However, the motion to approve the compromise will be denied. Therefore, the premise of this motion, that given the compromise the debtor is no longer in need of a mechanism to resolve its financial difficulties, is faulty.

Accordingly, the debtor's motion is denied.

4. 04-23504-A-11 RICOR — CONT. STATUS CONFERENCE 4-6-04 [1]

Tentative Ruling: None. Appearances required.

5. 04-23506-A-11 RICOR RACING AND DEVELOPMENT — HEARING - MOTION TO DISMISS CASE BY DEBTOR 8-27-04 [29]
DF #1

Tentative Ruling: The debtor, a limited partnership, filed a petition for relief under chapter 11 on April 4, 2004. Its general partner, Ricor, Inc., also filed a petition for relief under chapter 11 on April 4, 2004. All of Ricor, Inc.'s stock is solely owned by Donald and Georgina Richardson, who jointly filed a petition for relief under chapter 11 on November 3, 2003.

Ricor Inc. derives its income from its contract with Ricor Racing and Development for management fees. Both Ricor Inc. and Ricor Racing and Development filed their chapter 11 petitions as a result of pending state court litigation against them. A complaint was being prosecuted by various limited

partners of Ricor Racing and Development against Mr. Richardson, Ricor Racing and Development, and the debtor. The state court litigation alleges causes of action against Mr. Richardson for breach of contract, fraud, alter ego liability, and dissolution of Ricor Racing and Development. In addition, a related adversary proceeding was brought against Mr. Richardson pursuant to 11 U.S.C. § 523(a)(2) and (4).

Ricor Racing and Development owns various patents involving shock absorber technology invented by Mr. Richardson. The pending state case has inhibited Ricor Racing and Development's ability to contract with both existing and potential licensees, who fear possible dissolution of Ricor Racing and Development. As a result, Ricor Racing and Development was unable to pay the management fees to Ricor Inc. as well as amounts owed to its other creditors.

Ricor Racing and Development receives royalty income from its agreement with Edelbrock Corporation and Onsport for the use of its intellectual property rights. Edelbrock is recouping one-half of its royalty obligation under its license agreement with Ricor Racing and Development. Its recoupment will be completed by the end of July 2005, resulting in a substantial revenue increase for Ricor Racing and Development.

The Richardsons have brought a motion to approve a compromise with the plaintiff-limited partners and to convert their petition to one under chapter 13. Under the agreement, the plaintiffs plan to dismiss both the adversary proceeding and the state court litigation upon approval of the compromise. However, the motion to approve the compromise will be denied. Therefore, the premise of this motion, that given the compromise the debtor is no longer in need of a mechanism to resolve its financial difficulties, is faulty.

Accordingly, the debtor's motion is denied.

6.	04-23506-A-11	RICOR RACING AND DEVELOPMENT	CONT. STATUS CONFERENCE 4-6-04 [1]

Tentative Ruling: None. Appearances required.

7.	03-31981-A-11 04-2033 JACQUELINE BALESTRA, ET AL., VS. DONALD/GEORGINA RICHARDSON	DONALD/GEORGINA RICHARDSON DF #1	HEARING - MOTION TO COMPROMISE CLAIM AND TO CONVERT CASE TO CHAPTER 13 8-27-04 [15]

Tentative Ruling: The debtors filed a petition for relief under chapter 11 on November 3, 2004. Prior to filing their petition, a complaint was brought in state court by the plaintiffs, various limited partners of Ricor Racing and Development, against Mr. Richardson, Ricor Racing and Development, and Ricor, Inc. Ricor, Inc. is the general partner of Ricor Racing and Development. The debtors are the sole shareholders of Ricor, Inc., and Mr. Richardson is the sole officer, of Ricor, Inc. The state court litigation involves alleged causes of action for breach of contract, fraud, alter ego liability, and dissolution of Ricor Racing and Development.

On February 10, 2004, the plaintiffs filed this adversary proceeding alleging that the damages sought in the state court action are not dischargeable pursuant to 11 U.S.C. § 523(a)(2) and (4).

On April 6, 2004, Ricor Racing and Development and Ricor, Inc. both filed petitions for relief under chapter 11. Both Ricor Racing and Development and

Ricor, Inc. are without sufficient financial resources to retain independent counsel.

The debtors, Ricor Racing and Development, Ricor, Inc., and the plaintiffs have agreed to a compromise regarding the pending litigation. Under the compromise:

1) the state action will be dismissed upon the court's approval of this compromise; and

2) Ricor Racing and Development will repurchase the limited partnership units owned by the plaintiffs for $1,300,000, payable from future revenues of the partnership to a third party receiver to be distributed as follows:

a) 10% of the revenues from May 1, 2004 through July 1, 2004 will be paid to the plaintiffs, and the remaining revenues will be paid to the partnership for its business operations;

b) thereafter, a total of 25% of the revenues will be paid to the plaintiffs until the obligation is paid in full; and

c) the purchase price will accrue interest at the annual rate of six percent.

At the present time, Ricor Racing and Development receives royalty income from its agreement with Edelbrock Corporation and Onsport for the use of its intellectual property rights. Edelbrock is withholding one-half of its royalty obligation under its license agreement with Ricor Racing and Development in order to recoup an obligation owed to it by Ricor Racing and Development. The recoupment will be completed by the end of July 2005, resulting in a substantial revenue increase for Ricor Racing and Development.

The debtors assert that they did not qualify to file under chapter 13 at the time of filing their petition. However, the debtors argue that they would meet the debt limits imposed by 11 U.S.C. § 109(e) after the implementation of the compromise.

Opposition has been filed by secured creditor Edelbrock. Edelbrock contends that the debtors have not submitted any evidence to support the relief requested. Edelbrock notes that the debtors have failed to address the Woodson factors, and that the compromise would not be in the best interest of all creditors. According to Edelbrock, the compromise agreement impermissibly impairs its security interest in the debtor's ownership interests in Ricor Racing and Development and Ricor, Inc. The debtors' shares of common stock of Ricor, Inc. and the debtors' limited partnership interests in Ricor Racing and Development serve as collateral for the creditor's pre-petition secured claim.

Fed. R. Bankr. P. 9019(a) allows court approval of settlements and compromises. See also Local Bankr. R. 9019. The approval of a stipulation turns on whether the stipulation is fair, equitable, and in the best interest of the estate. See In re A&C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). In deciding whether to approve settlements, courts consider the following factors: (a) "the probability of success in the litigation;" (b) collection difficulties; (c) the expense, inconvenience, delay, and complexity of the litigation; and (d) "the paramount interest of the creditors and a proper deference to their reasonable views in the premises." Id; see also In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

Here, the debtors have provided the court with no evidence supporting their

motion. No declarations or other evidence has been filed. The debtors have also failed to analyze whether the subject compromise complies with the Woodson factors. The debtors merely state that the settlement would be in the best interests of the estate because it would end the adversary proceeding with the plaintiffs.

Further, the compromise permits disparate treatment of the limited partners of Ricor Racing and Development. The plaintiffs are only 8 of the 26 limited partners identified on the list of equity security holders filed for Ricor Racing and Development. Were this provision in a plan of reorganization the court would not approve the buy-out of some equity holders absent the consent of those who continued to hold their equity. The result does not change by sneaking the provision into a compromise.

The court is also concerned that the Ricor Inc. and Ricor Racing and Development are not represented by separate counsel, at least in connection with this compromise. It appears that the Richardsons are using the future income of Ricor Racing and Development to buy off those limited partners who have asserted claims against them. This would appear to mean that the other partners are footing the bill for the extraction of the Richardsons from their litigation predicament.

Accordingly, the motion is denied. Because the court denies the motion to approve the compromise, the debtors remain ineligible to convert their case to a petition under chapter 13. The court further notes that even if the compromise were approved, the debtors would remain ineligible for chapter 13 relief. Eligibility is determined as of the petition date. Section 109(e) directs that the court determine the debtor's claims "on the date of the filing of the petition."

8. 03-31981-A-11 DONALD/GEORGINA RICHARDSON
04-2033
JACQUELINE BALESTRA, ET AL., VS.
DONALD/GEORGINA RICHARDSON

CONT. STATUS CONFERENCE
2-10-04 [1]

Tentative Ruling: None. Appearances required.

9. 04-25405-A-11 PENINSULA CAPITAL GROUP
MHA #5

HEARING - VERIFIED
MOTION TO DISMISS CASE
9-3-04 [52]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the trustee, the United States Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

10. 04-28106-A-7 ERIC VALDEZ

HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
9-2-04 [7]

Tentative Ruling: The petition will be dismissed.

The debtor filed a voluntary petition for relief under chapter 7 on August 9, 2004. Kenneth Sanders was appointed as the chapter 7 trustee. The debtor failed to file the Statement of Financial Affairs with his petition.

Pursuant to Fed. R. Bankr. P. 1007(c), the Statement of Financial Affairs was due on August 24, 2004. The missing document has still not been filed. The petition is therefore dismissed, pursuant to Fed. R. Bankr. P. 1007(b)(1). The debtor has failed to discharge the duty imposed by 11 U.S.C. § 521(1).

11. 00-34012-A-7 C.R. JEFFRIES CONSTRUCTION — HEARING - TRUSTEE'S OBJECTION TO PRIORITY CLAIM OF PETERSON POWER SYSTEMS
SMR #5 — 8-9-04 [333]

Final Ruling: This objection to the proof of claim of Peterson Power Systems has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(d)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The claimant's default is entered and the objection will be resolved without oral argument.

On December 19, 2000, the debtor filed a petition for relief under chapter 11. The case was converted to a petition under chapter 7 on January 18, 2001. May 29, 2001 was fixed as the last day to file a proof of claim.

On January 31, 2001, the claimant, Peterson Power Systems, filed a proof of claim in the amount of $12,531.12. Priority status is claimed, albeit no reference is made to a particular subdivision of 11 U.S.C. § 507(a) under which priority is claimed.

The trustee does not object to the amount of this claim. However, the trustee objects that this claim is not a priority claim.

Here, the proof of claim indicates that the basis of the claim was goods sold, services performed, and rentals, and that the debt was incurred in November 1998. No priority is given for such claims by 11 U.S.C. § 507(a).

The objection will be sustained.

12. 00-34012-A-7 C.R. JEFFRIES CONSTRUCTION — HEARING - TRUSTEE'S OBJECTION TO PRIORITY CLAIM OF PACIFIC WEST BUILDERS, INC.
SMR #6 — 8-9-04 [330]

Final Ruling: This objection to the proof of claim of Pacific West Builders, Inc. has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(d)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The claimant's default is entered and the objection will be resolved without oral argument.

On December 19, 2000, the debtor filed a petition for relief under chapter 11. The case was converted to a petition under chapter 7 on January 18, 2001. May 29, 2001 was fixed as the last day to file a proof of claim.

On January 8, 2001, the claimant, Pacific West Builders, filed a proof of claim for an estimated $100,000. Priority status is claimed, albeit no reference is made to a particular subdivision of 11 U.S.C. § 507(a) under which priority is claimed.

The trustee does not object to the amount of this claim. However, the trustee objects that this claim is not a priority claim.

Here, the proof of claim indicates that the basis of the claim was anticipated warranty obligations according to contract, and that the debt was incurred on December 31, 2000. A warranty obligation does not provide a basis to assert priority pursuant to 11 U.S.C. § 507. Therefore, the court sustains the objection and allows the claim as a general unsecured claim.

The objection will be sustained.

13. 00-34012-A-7 C.R. JEFFRIES CONSTRUCTION
SMR #7

HEARING - TRUSTEE'S OBJECTION TO PRIORITY CLAIM OF JOSE SANTILLAN
8-9-04 [327]

Final Ruling: This objection to the proof of claim of Jose Santillan has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(d)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The claimant's default is entered and the objection will be resolved without oral argument.

On December 19, 2000, the debtor filed a petition for relief under chapter 11. The case was converted to a petition under chapter 7 on January 18, 2001. May 29, 2001 was fixed as the last day to file a proof of claim.

On January 31, 2001, the claimant, Jose Santillan, filed a proof of claim in the amount of $33,805. Priority status is claimed for wages, salaries, or commissions pursuant to 11 U.S.C. § 507(a)(3).

The trustee does not object to the amount of this claim. However, the trustee objects that this claim is not a priority claim.

Pursuant to section 507(a)(3), unsecured claims for wages earned within 90 days before the date of the filing of the petition up to a maximum of $4,650 are entitled to be treated as priority claims.

Here, the proof of claim indicates that the basis of the claim was services performed and equipment rental, and that the debt was incurred from August 1995 through March 1998. Assuming these are wages, they were earned during a period of time that fell more than 90 days prior to the filing of the petition. Therefore, the claim is not entitled to priority status.

The objection will be sustained.

14. 03-33212-A-11 MALLOY ORCHARDS, INC.
RSB #24

HEARING - DEBTOR'S MOTION FOR THIRD EXTENSION OF TIME TO ASSUME OR REJECT, OR, IN THE ALTERNATIVE TO ASSUME, REAL PROPERTY LEASE WITH VICTOR G. STRAIN TRUST
8-23-04 [346]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of these respondents are entered and the matter will be resolved without oral argument.

Malloy Orchards, Inc., as debtor in possession, moves this court for a 120-day extension of time to assume or reject its nonresidential real property lease with the Victor G. Strain Trust, or in the alternative to assume the lease.

The debtor filed a petition for relief under chapter 11 on December 9, 2003 and has continued to manage its financial affairs as the debtor-in-possession. The debtor grows peaches, prunes, and walnuts, and performs custom harvesting work in California, Texas, and Arizona.

In September 1990, the debtor's president and sole shareholder, William Filter, executed a written lease with the Victor G. Strain Trust. The lease names Mr. Filter as lessee of property consisting of 500 acres of fruit orchards with irrigation systems. The property is located at 10730 Highway 70, Marysville, Yuba County California. The lease runs from September 1, 1990 to September 1, 2030.

Although Mr. Filter is the named lessee, the debtor has occupied and improved the property for the farming of Cling peaches, French prunes and English walnuts from the commencement of the lease. In December 2003, Mr. Filter assigned his interest in the lease to the debtor and the debtor has continued to occupy and maintain the property, in addition to paying all rents due under the lease.

The debtor argues that the lease is necessary to the continued operation of the debtor's business, as the property is a primary site for the debtor's farming operations. Furthermore, the debtor is current on the lease and the rent will not be due until the fall of 2004.

The court held a hearing and granted a first extension to assume or reject this lease. The date to assume or reject the lease was extended from February 9, 2004 to May 7, 2004. The court later granted a second extension that extended the date to assume or reject the lease to September 3, 2004.

Pursuant to 11 U.S.C. § 365(d) the court may for cause, extend beyond 60 days the time during which a debtor is to assume or reject a nonresidential real property lease, where the debtor is a lessee. The court should examine certain factors in deciding whether good cause exists to assume or reject nonresidential leases: 1) whether the lease is the primary asset of the debtor; 2) whether the lessor has a reversionary interest in the building built by the debtor on the landlord's land; 3) whether the debtor has had time to intelligently appraise its financial situation and the potential value of its

assets; 4) whether the lessor continues to receive rental payments; 5) whether the lessor will be damaged beyond compensation available; 6) whether the case is exceptionally complex and involves a large number of leases; 7) whether need exists for judicial determination of whether the lease is a disguised security agreement; 8) whether the debtor has failed or is unable to formulate a plan when it has had more than enough time to do so and 9) any other factors bearing on whether the debtor has had a reasonable amount of time to decide to assume or reject the lease. In re Muir Training Technologies, Inc. 120 B.R. 154, 158-159 (Bankr. S.D. Cal. 1990) (citing In re Victoria Station Inc., 88 B.R. 231, 236 (B.A.P. 9th Cir. 1988)).

The court finds that there is cause to allow the debtor to have an additional 120 days to assume or reject this lease. The lease is very valuable to the debtor, as it is the primary site for the debtor's farming operations. Furthermore, the debtor is current under the lease. The debtor has recently obtained financing that should fund a proposed plan of reorganization. However, negotiations with creditors have not yet concluded. Therefore, the debtor is still unable to intelligently appraise its financial situation. Finally, it does not appear that the lessor will be harmed by this extension.

The motion will be granted. The new date to assume or reject this lease is December 31, 2004.

15. 03-33212-A-11 MALLOY ORCHARDS, INC.
RSB #25

HEARING - DEBTOR'S MOTION FOR THIRD EXTENSION OF TIME TO ASSUME OR REJECT, OR, IN THE ALTERNATIVE TO ASSUME, REAL PROPERTY LEASE WITH JANE SELLARS HERNANDEZ
8-23-04 [351]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of these respondents are entered and the matter will be resolved without oral argument.

Malloy Orchards, Inc., as debtor in possession, moves this court for a 120-day extension of time to assume or reject its nonresidential real property lease with Jane Sellars Hernandez, or in the alternative to assume the lease.

The debtor filed a petition for relief under chapter 11 on December 9, 2003 and has continued to manage its financial affairs as the debtor-in-possession. The debtor grows peaches, prunes, and walnuts, and performs custom harvesting work in California, Texas, and Arizona.

In January 1995 the debtor entered into a written lease with Hernandez to lease Hernandez's property located at 2689 Highway 70, Oroville, Butte County, California. The property consists of approximately 40 acres of fruit orchards with irrigation systems. The lease runs from September 1, 1994 through August 31, 2019. The debtor currently grows French prunes on the property.

Under the lease the debtor shares with Hernandez 15% of the annual crop harvested from the property. The rent payments are current and will not become due until the fall of 2004.

This court previously extended the date to assume or reject this lease from February 9, 2004 to May 7, 2004. The court later granted a second extension extending the deadline to September 3, 2004.

Pursuant to 11 U.S.C. § 365(d) the court may for cause, extend beyond 60 days the time during which a debtor is to assume or reject a nonresidential real property lease, where the debtor is a lessee. The court should examine certain factors in deciding whether good cause exists to assume or reject nonresidential leases: 1) whether the lease is the primary asset of the debtor; 2) whether the lessor has a reversionary interest in the building built by the debtor on the landlord's land; 3) whether the debtor has had time to intelligently appraise its financial situation and the potential value of its assets; 4) whether the lessor continues to receive rental payments; 5) whether the lessor will be damaged beyond compensation available; 6) whether the case is exceptionally complex and involves a large number of leases; 7) whether need exists for judicial determination of whether the lease is a disguised security agreement; 8) whether the debtor has failed or is unable to formulate a plan when it has had more than enough time to do so and 9) any other factors bearing on whether the debtor has had a reasonable amount of time to decide to assume or reject the lease. In re Muir Training Technologies, Inc. 120 B.R. 154, 158-159 (Bankr. S.D. Cal. 1990) (citing In re Victoria Station Inc., 88 B.R. 231, 236 (B.A.P. 9th Cir. 1988)).

The court finds that there is cause to allow the debtor to have an additional 120 days to assume or reject this lease. The lease is very valuable to the debtor and the debtor is current under the lease. The debtor has recently obtained financing that should fund a proposed plan of reorganization. However, the debtor is unable to intelligently appraise its financial situation, as negotiations with creditors regarding the terms of the plan have not yet concluded. Furthermore, it does not appear that the lessor will be harmed by this extension. Therefore, the new date to assume or reject this lease is December 31, 2004.

The motion will be granted.

16. 03-33212-A-11 MALLOY ORCHARDS, INC.
RSB #26

HEARING - DEBTOR'S MOTION FOR THIRD EXTENSION OF TIME TO ASSUME OR REJECT, OR, IN THE ALTERNATIVE TO ASSUME, REAL PROPERTY LEASE WITH FILTER FAMILY TRUST
8-23-04 [356]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of these respondents are entered and the matter will be resolved without oral argument.

Malloy Orchards, Inc., as debtor in possession, moves this court for a 120-day extension of time to assume or reject its nonresidential real property lease with the Filter Family Trust, or in the alternative to assume the lease.

The debtor filed a petition for relief under chapter 11 on December 9, 2003 and has continued to manage its financial affairs as the debtor-in-possession. The

debtor grows peaches, prunes, and walnuts, and performs custom harvesting work in California, Texas, and Arizona.

In 1991, the debtor entered into an oral lease of the trust's property located at 925 Koch Lane, Live Oak, Sutter County, California. The property consists of 13 acres of fruit orchards with irrigation systems. The debtor currently grows Cling peaches on the property and its office is located on the property. Additionally, the debtor's sole shareholder, Mr. Filter, maintains his residence on the property.

Under the lease the debtor is obligated to share 15% of the crop harvested from the property. The rent payments are now current and rent will not be due until the fall of 2004.

The trustees and beneficiaries of the trust are Mr. Filter's parents. Mr. Filter leases from the trust approximately 11 acres, that are part of the parcel on which the debtor leases 13 acres from the trust.

This court previously extended the date to assume or reject this lease from February 9, 2004 to May 7, 2004. The court later granted a second extension extending the deadline to September 3, 2004.

Pursuant to 11 U.S.C. § 365(d) the court may for cause, extend beyond 60 days the time during which a debtor is to assume or reject a nonresidential real property lease, where the debtor is a lessee. The court should examine certain factors in deciding whether good cause exists to assume or reject nonresidential leases: 1) whether the lease is the primary asset of the debtor; 2) whether the lessor has a reversionary interest in the building built by the debtor on the landlord's land; 3) whether the debtor has had time to intelligently appraise its financial situation and the potential value of its assets; 4) whether the lessor continues to receive rental payments; 5) whether the lessor will be damaged beyond compensation available; 6) whether the case is exceptionally complex and involves a large number of leases; 7) whether need exists for judicial determination of whether the lease is a disguised security agreement; 8) whether the debtor has failed or is unable to formulate a plan when it has had more than enough time to do so and 9) any other factors bearing on whether the debtor has had a reasonable amount of time to decide to assume or reject the lease. In re Muir Training Technologies, Inc. 120 B.R. 154, 158-159 (Bankr. S.D. Cal. 1990) (citing In re Victoria Station Inc., 88 B.R. 231, 236 (B.A.P. 9th Cir. 1988)).

The court finds that there is cause to allow the debtor to have an additional 120 days to assume or reject this lease. The lease is very valuable to the debtor and the debtor is current under the lease. The debtor has obtained financing that should fund a proposed plan of reorganization. However, the debtor is unable to intelligently appraise its financial situation, as negotiations with creditors regarding the terms of the plan have not yet concluded. Furthermore, it does not appear that the lessor will be harmed by this extension. Therefore, the new date to assume or reject this lease is December 31, 2004.

The motion will be granted.

17. 03-33212-A-11 MALLOY ORCHARDS, INC.
RSB #27

HEARING - DEBTOR'S MOTION FOR THIRD EXTENSION OF TIME TO ASSUME OR REJECT, OR, IN THE ALTERNATIVE TO ASSUME, REAL PROPERTY LEASE WITH HELEN MALLOY (LOT 120-SUNSET COLONY NO. 1)
8-23-04 [361]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of these respondents are entered and the matter will be resolved without oral argument.

Malloy Orchards, Inc., as debtor in possession, moves this court for a 120-day extension of time to assume or reject its nonresidential real property lease with Helen Malloy, or in the alternative to assume the lease.

The debtor filed a petition for relief under chapter 11 on December 9, 2003 and has continued to manage its financial affairs as the debtor-in-possession. The debtor grows peaches, prunes, and walnuts, and performs custom harvesting work in California, Texas, and Arizona.

In May 1988 the debtor entered into a written lease with Malloy to lease Malloy's property located in Sutter County and bounded in part by Kent Avenue and Paseo Avenue. The property consists of 13 acres of fruit orchards with irrigation systems. The lease ran from January 1, 1987 through October 1, 2001. The debtor currently grows Cling peaches on the property. Since the time the lease expired, the debtor has, with Malloy's consent, continued to occupy the property on a year-to-year basis.

The debtor and Mr. Filter have no family relationship or other business relationship with Malloy. The debtor is informed that Malloy is now deceased and that a probate representative is handling the business affairs of her estate.

Under the lease the debtor is obligated to share with Malloy 15% of the annual crop harvested from the property. The rent payments are current and will not be due again until the fall of 2004.

The debtor argues that the continued operation of the debtor's business of this property is necessary for the debtor's farming operations. The debtor is willing and able as lessee to maintain the orchards on the property as contemplated by the lease.

This court previously extended the date to assume or reject this lease from February 9, 2004 to May 7, 2004. The court later granted a second extension extending the deadline to September 3, 2004.

Pursuant to 11 U.S.C. § 365(d) the court may for cause, extend beyond 60 days the time during which a debtor is to assume or reject a nonresidential real property lease, where the debtor is a lessee. The court should examine certain factors in deciding whether good cause exists to assume or reject nonresidential leases: 1) whether the lease is the primary asset of the debtor;

2) whether the lessor has a reversionary interest in the building built by the debtor on the landlord's land; 3) whether the debtor has had time to intelligently appraise its financial situation and the potential value of its assets; 4) whether the lessor continues to receive rental payments; 5) whether the lessor will be damaged beyond compensation available; 6) whether the case is exceptionally complex and involves a large number of leases; 7) whether need exists for judicial determination of whether the lease is a disguised security agreement; 8) whether the debtor has failed or is unable to formulate a plan when it has had more than enough time to do so and 9) any other factors bearing on whether the debtor has had a reasonable amount of time to decide to assume or reject the lease. In re Muir Training Technologies, Inc. 120 B.R. 154, 158-159 (Bankr. S.D. Cal. 1990) (citing In re Victoria Station Inc., 88 B.R. 231, 236 (B.A.P. 9th Cir. 1988)).

The court finds that there is cause to allow the debtor to have an additional 120 days to assume or reject this lease. The lease is very valuable to the debtor and the debtor is current under the lease. The debtor has obtained financing that should fund a proposed plan of reorganization. However, the debtor is unable to intelligently appraise its financial situation, as negotiations with creditors regarding the terms of the plan have not yet concluded. Furthermore, it does not appear that the lessor will be harmed by this extension. Therefore, the new date to assume or reject this lease is December 31, 2004.

The motion will be granted.

18. 03-33212-A-11 MALLOY ORCHARDS, INC.
RSB #28

HEARING - DEBTOR'S MOTION TO THIRD EXTENSION OF TIME TO ASSUME OR REJECT, OR, IN THE ALTERNATIVE TO ASSUME, REAL PROPERTY LEASE WITH HELEN MALLOY (LOT 119-SUNSET COLONY NO. 1)
8-23-04 [366]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of these respondents are entered and the matter will be resolved without oral argument.

Malloy Orchards, Inc., as debtor in possession, moves this court for a 120-day extension of time to assume or reject its nonresidential real property lease with Helen Malloy, or in the alternative to assume the lease.

The debtor filed a petition for relief under chapter 11 on December 9, 2003 and has continued to manage its financial affairs as the debtor-in-possession. The debtor grows peaches, prunes, and walnuts, and performs custom harvesting work in California, Texas, and Arizona.

In January 1991 the debtor entered into a written lease with Malloy to lease Malloy's property located in Sutter County and bounded in part by Kent Avenue and Paseo Avenue. The property consists of approximately 15 acres of fruit orchards with irrigation systems. The debtor grows Cling peaches on the property.

The debtor and Mr. Filter have no family relationship or other business relationship with Malloy. The debtor is informed that Malloy is now deceased and that a probate representative is handling the business affairs of her estate.

Under the lease the debtor is obligated to share with Malloy 15% of the annual crop harvested from the property. The rent payments are current and will not be due again until the fall of 2004.

The debtor argues that the continued operation of the debtor's business on this property is necessary for the debtor's farming operations. The debtor is willing and able as lessee to maintain the orchards on the property as contemplated by the lease.

This court previously extended the date to assume or reject this lease from February 9, 2004 to May 7, 2004. The court later granted a second extension extending the deadline to September 3, 2004.

Pursuant to 11 U.S.C. § 365(d) the court may for cause, extend beyond 60 days the time during which a debtor is to assume or reject a nonresidential real property lease, where the debtor is a lessee. The court should examine certain factors in deciding whether good cause exists to assume or reject nonresidential leases: 1) whether the lease is the primary asset of the debtor; 2) whether the lessor has a reversionary interest in the building built by the debtor on the landlord's land; 3) whether the debtor has had time to intelligently appraise its financial situation and the potential value of its assets; 4) whether the lessor continues to receive rental payments; 5) whether the lessor will be damaged beyond compensation available; 6) whether the case is exceptionally complex and involves a large number of leases; 7) whether need exists for judicial determination of whether the lease is a disguised security agreement; 8) whether the debtor has failed or is unable to formulate a plan when it has had more than enough time to do so and 9) any other factors bearing on whether the debtor has had a reasonable amount of time to decide to assume or reject the lease. In re Muir Training Technologies, Inc. 120 B.R. 154, 158-159 (Bankr. S.D. Cal. 1990) (citing In re Victoria Station Inc., 88 B.R. 231, 236 (B.A.P. 9th Cir. 1988)).

The court finds that there is cause to allow the debtor to have an additional 120 days to assume or reject this lease. The lease is very valuable to the debtor and the debtor is current under the lease. The debtor has obtained financing that should fund a proposed plan of reorganization. However, the debtor is unable to intelligently appraise its financial situation, as negotiations with creditors regarding the terms of the plan have not yet concluded. Furthermore, it does not appear that the lessor will be harmed by this extension. Therefore, the new date to assume or reject this lease is December 31, 2004.

The motion will be granted.

19.	01-25416-A-11 RSB #68	CALIFORNIA PACIFIC RICE MILLING	CONT. HEARING - MOTION TO PARTIALLY DISALLOW CLAIM OF CHRISMAN FARMS FOR PURPOSES OF FUTURE DISTRIBUTION FROM ESTATE 6-18-04 [818]

Final Ruling: This objection to the proof of claim of Chrisman Farms has been set for hearing on at least 44 days' notice to the claimant as required by

Local Bankruptcy Rule 3007-1(d)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The claimant's default is entered and the objection will be resolved without oral argument.

On May 3, 2001 the debtor filed a petition for relief under chapter 11 and this court entered an order confirming the debtor's plan on March 5, 2002. John Tesar was appointed pursuant to this order, to serve as the plan administrator.

On August 27, 2001 the claimant filed claim number 96 in the amount of $65,073.03 as a secured claim. The claimant seeks payments for the debtor's alleged pre-petition purchase of rice. The claimant asserts that $16,950.15 was due for the 2000 Rice Crop purchased by the debtor and $48,122.28 was due for the "Non-2000 Rice Crop" purchased by the debtor.

On July 10, 2001 the court entered an order authorizing the debtor to sell all of its business assets except its 1999 rice crop inventory, free and clear of liens and encumbrances. The sale proceeds were placed in a segregated bank account.

In August 2001 Mr. Tesar disbursed to the claimant the sum of $16,950.15 from the account based on the claimant's asserted grower's lien against the 2000 rice crop proceeds. Mr. Tesar declares that the amount paid was in full and final satisfaction of all amounts owed to the claimant.

The proof of claim is presumed to be prima facie valid. 11 U.S.C. § 502(a). The presumption may be overcome by the objecting party only if it offers evidence of equally probative value in rebuttal. In re Holm, 931 F.2d 620, 623 (9th Cir. 1991); In re Fullmer, 962 F.2d 1463, 4166 (10th Cir. 1992); In re Allegheny International, Inc., 954 F.2d 167, 173-74 (3rd Cir. 1992). The burden then shifts back to the claimant to produce evidence meeting the objections and establishing the claim.

Here, Mr. Tesar has rebutted the presumptive validity of the claim. Mr. Tesar has declared that the claimant was paid $16,950.15 from the account in full satisfaction of its claim. Furthermore, exhibits are attached also evidencing this satisfaction. As such, the burden has shifted and the claimant now has the burden of going forward. However, the burden of going forward was not met as no opposition was filed by the claimant.

The objection will be sustained.

20.	01-25416-A-11 RSB #69	CALIFORNIA PACIFIC RICE MILLING	CONT. HEARING - MOTION TO PARTIALLY DISALLOW CLAIM OF JOE AND GENROSE CHRISMAN, AS TO SECURITY ONLY 6-18-04 [823]

Final Ruling: This objection to the proof of claim of Joe and Genrose Chrisman has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(d)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The claimant's default is entered and the objection will be resolved without oral argument.

On May 3, 2001 the debtor filed a petition for relief under chapter 11 and this court entered an order confirming the debtor's plan on March 5, 2002. John Tesar was appointed pursuant to this order, to serve as the plan administrator.

On August 27, 2001 the claimant filed claim number 101 in the amount of $8,931.02 as a secured claim. The claimant seeks payments for the debtor's alleged pre-petition purchase of rice.

Mr. Tesar objects that the claim is not entitled to secured status and only should be allowed as a general unsecured claim.

The proof of claim is presumed to be prima facie valid. 11 U.S.C. § 502(a). The presumption may be overcome by the objecting party only if it offers evidence of equally probative value in rebuttal. In re Holm, 931 F.2d 620, 623 (9th Cir. 1991); In re Fullmer, 962 F.2d 1463, 4166 (10th Cir. 1992); In re Allegheny International, Inc., 954 F.2d 167, 173-74 (3rd Cir. 1992). The burden then shifts back to the claimant to produce evidence meeting the objections and establishing the claim. That is the claimant must meet the burden of going forward.

Here, Mr. Tesar has rebutted the presumptive validity of the claim. The court has reviewed the proof of claim that is attached as an exhibit to this motion. The claim seeks secured status but does not otherwise demonstrate entitled to any claim of security against any asset of the estate. As such, the burden has shifted and the claimant now has the burden of going forward. However, the burden of going forward was not met as no opposition was filed by the claimant.

The objection will be sustained and the claim will be allowed as a general unsecured creditor.

21. 04-27316-A-7 MARY SCOTT
LJB #1
WELLS FARGO BANK, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY ETC
8-30-04 [9]

Tentative Ruling: The motion will be granted.

The debtor filed a voluntary petition for relief under chapter 7 on July 16, 2004. Frederick J. Lucksinger was appointed as the chapter 7 trustee.

The movant, secured creditor Wells Fargo Bank, seeks relief from stay with respect to real property located at 180 Diana Ave., in Erwin, Tennessee. The debtor failed to make 24 mortgage payments. The delinquency covers the period of September 1, 2002 through August 1, 2004. The movant argues that relief from stay should be granted pursuant to 11 U.S.C. § 362(d)(1) and (2).

The motion is granted pursuant to 11 U.S.C. § 362(d)(2). A motion for relief from automatic stay must be granted when the debtor does not have equity in the subject property and when it is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). The subject real property has a value of $62,560 and is encumbered by a perfected deed of trust in favor of the movant. Amended Schedule A filed by the debtor on September 1, 2004 admits that property has a value of less than $63,000. The movant's secured claim totals approximately $105,000. There is no equity and there is no evidence that the trustee can administer the subject real property for the benefit of creditors. Because this is a chapter 7 liquidation, it is evident that the subject property is not necessary to an effective reorganization.

Therefore, this motion for relief from the automatic stay will be granted to permit the movant to conduct a foreclosure sale and to obtain possession of the subject real property following the sale.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

22. 01-27520-A-7 JOHN LEACH
FHS #2
VS. LELAND HERNANDEZ

HEARING - MOTION TO AVOID JUDICIAL LIEN IMPAIRING DEBTOR'S EXEMPTION
8-20-04 [34]

Final Ruling: This motion to avoid a judicial lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee and the respondent creditor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the trustee and the creditor are entered and the matter will be resolved without oral argument.

The motion will be granted subject to the filing of a declaration by the debtor within 15 days of the hearing attesting to the facts alleged in the motion.

Assuming such a declaration is filed, the motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of $201,000 as of the date of the petition. The unavoidable liens total $183,807. The debtor owns half of the total equity, $17,192, and has an available exemption of $8,546 to exempt all of his share of the property. The respondents hold judicial liens created by the recordation of abstracts of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial liens. Therefore, the fixing of the judicial liens impairs the debtor's exemption of the real property and their fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B) as to the debtor's interest in the property.

23. 04-27528-A-7 JAMES/SABRINA SCHORNICK
KCC #1
PATELCO CREDIT UNION, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
8-20-04 [7]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the debtor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The debtor's default is entered and the matter will be resolved without oral argument.

The motion is granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to repossess its collateral, to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim including any

attorneys' fees awarded herein. No other relief is awarded. The subject property has a value of $6,437.50 and is encumbered by a perfected security interest in favor of the movant. That security interest secures a claim of $12,334.53. There is no equity and there is no evidence that the property is necessary to a reorganization or that the trustee can administer the subject property for the benefit of creditors.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is ordered waived due to the fact that the movant's collateral is being used by the debtor without compensation and is depreciating in value.

24. 04-28935-A-11 GRANITE BAY JEWELERS, INC. CONT. HEARING - MOTION TO
RSB #1 APPROVE THE USE OF CASH COLLATERAL
9-2-04 [6] O.S.T.

Tentative Ruling: The debtor filed a petition for relief under chapter 11 on September 2, 2004 and has continued to manage its financial affairs as the debtor-in-possession. The debtor owns and operates a retail jewelry store.

The debtor's secured creditor, Union Bank of California, asserts a security interest in the personal property assets of the debtor. This security interest may extend to cash on hand, work in progress, inventory, contracts, account receivables, and proceeds thereof.

Pursuant to 11 U.S.C. § 363, the cash generated from the sale of inventory is the cash collateral of this creditor.

On September 7, 2004 the court authorized the first interim use of cash collateral.

The debtor has established a need to use this cash collateral for the purchase of inventory, to pay vendors, and to pay basic overhead expenses incurred post-petition for the running of the jewelry store.

No creditor has objected to the proposed use of cash collateral. It appears from the financial information presented that the debtor is able to provide adequate protection to those creditors with an interest in its cash collateral. That adequate protection consists of a replacement lien on the debtor's post-petition inventory, accounts receivable, and cash.

The motion will be granted.

25. 03-28738-A-7 VERNON/VIRGINIA NORDGREEN HEARING - MOTION TO
TAA #1 APPROVE SURRENDER OF NON-EXEMPT
EQUITY IN REAL PROPERTY
9-7-04 [15]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the debtor, the creditors, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final

hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

26. 04-27042-A-7 ALLEN JOHNSON — HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS 9-10-04 [12]

Final Ruling: The debtor filed a voluntary petition for relief under chapter 7 on July 9, 2004. Susan K. Smith was appointed as the chapter 7 trustee.

An order granting the debtor's application to pay the filing fee in installments was granted on July 9, 2004. The debtor paid his first installment fee of $52 on August 10, 2004, which was late by one day. An order to show cause for failure to pay the second installment fee, due on September 7, 2004, was issued on September 10, 2004.

That order to show cause will be discharged and the petition will remain pending. The debtor paid the installment fee on September 17, 2004.

27. 04-22744-A-7 TODD/KAREN TRACY — HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY 9-9-04 [11]
TJH #1
FIRST HORIZON HOME LOAN CORPORATION, VS.

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the moving creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

28. 04-22246-A-7 JEFFREY/CINDY STOWERS — HEARING - MOTION TO APPROVE SURRENDER OF NON-EXEMPT EQUITY IN REAL PROPERTY 9-3-04 [13]
TAA #1

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the debtor, the creditors, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

29. 04-26846-A-7 JODY MEJIA — CONT. HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY 7-22-04 [7]
M&B #1
COUNTRYWIDE HOME LOANS, INC., VS.

Tentative Ruling: The motion will be granted in part.

The debtors filed a petition for relief under chapter 7 on March 18, 2004.

Linda S. Schuette was appointed as the chapter 7 trustee. The debtors received their discharge on July 1, 2004.

The debtors executed a deed of trust in favor of the movant, First Horizon home Loan Corporation, to secure indebtedness in the amount of $172,000. The deed of trust encumbers residential property located at 2711 Burnap Avenue, in Chico, California. The subject property has a value of approximately $225,000 according to Schedules A and D.

The debtors have defaulted under the note, owing all payments accruing after July 1, 2004. The total unpaid balance on the note is $173,951.94, including costs.

The movant requests that relief from automatic stay be granted pursuant to 11 U.S.C. § 362(d)(1) and (2). The movant argues that cause exists due to inadequate protection and that the debtors do not have sufficient equity in the subject property.

Because they have received their discharge, the stay has expired with respect to the debtors and their interest in the subject property.

As to the estate, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2). A motion for relief from automatic stay must be granted when the debtor does not have equity in the subject property and when it is not necessary to an effective reorganization. Here, after taking into consideration potential costs of sale and the debtors' homestead exemption of $55,015, there is no equity in the subject property that can be realized by the estate. Because this is a chapter 7 liquidation it is evident that the property is not necessary to an effective reorganization. There is also no evidence in the record that the trustee can administer the subject property for the benefit of creditors. Accordingly, this motion will be granted pursuant to section 362(d)(2).

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. The motion demands payment of fees and costs. The court concludes that a similarly situated creditor would have filed this motion. Under these circumstances, the movant is entitled to recover reasonable fees and costs incurred in connection with prosecuting this motion. See 11 U.S.C. § 506(b). See also Fobian v. Western Farm Credit Bank (In re Fobian), 951 F.2d 1149, 1153 (9th Cir. 1991); Kord Enterprises II v. California Commerce Bank (In re Kord Enterprises II), 139 F.3d 684, 689 (9th Cir. 1998).

Therefore, the movant shall file and serve a separate motion seeking an award of fees and costs. The motion for fees and costs must be filed and served no later than 14 days after the conclusion of the hearing on the underlying motion. If not filed and served within this deadline, or if the movant does not intend to seek fees and costs, the court denies all fees and costs. The order granting the underlying motion shall provide that fees and costs are denied. If denied, the movant and its agents are barred in all events from recovering any fees and costs incurred in connection with the prosecution of the motion.

If a motion for fees and costs is filed, it shall be set for hearing pursuant to Local Bankruptcy Rule 9014(f)(1) or (f)(2). It shall be served on the debtors, the debtors' attorney, the trustee, and the United States Trustee. Any motion shall be supported by a declaration explaining the work performed in connection with the motion, the name of the person performing the services and a brief description of that person's relevant professional background, the amount of time billed for the work, the rate charged, and the costs incurred. If fees or costs are being shared, split, or otherwise paid to any person who is not a member, partner, or regular associate of counsel of record for the movant, the declaration shall identify those person(s) and disclose the terms of the arrangement with them.

Alternatively, if the debtors will stipulate to an award of fees and costs not to exceed $750, the court will award such amount. The stipulation of the debtor may be indicated by the debtor's signature, or the debtor's attorney's signature, on the order granting the motion and providing for an award of $750.

30. 02-32452-A-7 DOROTHY GRANDERSON — CONT. HEARING - DEBTOR'S OBJECTION TO CLAIM OF GUY ROBINSON
ET #1 — 6-25-04 [79]

Tentative Ruling: The objections (ET-1 and ET-2) will be sustained in part and the claim will be disallowed.

The debtor filed a voluntary petition under chapter 7 on November 12, 2002. Stephen M. Reynolds was appointed as the chapter 7 trustee. The debtor received her discharge on February 20, 2003, and an order closing the case was entered on March 4, 2003.

On May 28, 2003, the United States Trustee moved to reopen the debtor's case to administer additional assets. In his declaration supporting the motion, the chapter 7 trustee stated that he was informed by the debtor's attorney that the debtor had failed to disclose her interest in real property located at 3237 9th Avenue, in Sacramento, California. At that time, there was an open escrow for the purchase of the subject property by a third party for $75,000. The case was reopened on June 6, 2003.

On September 24, 2003, the court approved the trustee's motion (SMR-2) to sell the subject property to a different buyer procured by the trustee's broker. A written order was entered on November 4, 2003.

On October 28, 2003, the claimant, Guy Robinson, filed a proof of claim in the amount of $2,265.00. Both secured and priority status appear to be claimed, albeit without reference to any particular security or including any security documentation, and without reference to a particular subdivision of 11 U.S.C. § 507(a). From the claim and the response to the objection, the court understands that the claimant acted as a real estate sales agent or broker at the request of the debtor after the filing of the petition but before the subject real property was disclosed to the chapter 7 trustee. The services were rendered in connection with the debtor's attempted and uncompleted sale of the subject property in May 2003.

On June 25, 2004, the debtor filed an objection to the proof of claim. The debtor argues that the claim should be classified as a general unsecured claim.

The debtor filed a second objection to the proof of claim on August 9, 2004 (docket control no. ET-2). In that objection, the debtor argues that the claim

in its entirety should be disallowed because the claim is for post-petition compensation.

The claimant filed opposition to the objection on September 15, 2004. In his opposition the claimant argues that the reopening of the debtor's case indicates that his services were in fact completed pre-petition.

The claim will be disallowed. It is neither a pre-petition claim, whether, secured, priority or unsecured, and it is not an administrative expense of the estate.

The claim does not represent pre-petition services and therefore cannot be presented in a proof of claim. Only pre-petition claims may be presented in a proof of claim. The closing of the case and its later reopening had no impact on the petition date. The petition date is the relevant date for determining what claims will be discharged by the debtor and will be paid from the estate.

If the debtor entered into a contract with the claimant after the petition was filed, any resulting liability incurred by the debtor will not be discharged in this case. By the same token, the claimant does not have an allowable claim against the bankruptcy estate because it did not arise before the case was filed.

While the proof of claim asserts that it is secured, there is no evidence of the attachment or perfection of a security interest appended to the proof of claim.

Nor does the claimant have a viable administrative expense claim against the estate because he was not retained by the trustee and his employment was not approved by the court. See 11 U.S.C. § 327(a). He was retained by the debtor but the debtor had no authority to bind the estate or the trustee. Further, from the response filed by the claimant, it appears that the trustee sold the property to someone other than the person procured by the claimant on behalf of the debtor. Consequently, the claimant's services were rendered to the debtor and were not necessary for the preservation of the estate and they did not benefit the estate. Therefore, the claim is not entitled to be treated as an administrative expense pursuant to 11 U.S.C. § 503(b).

31. 02-32452-A-7 DOROTHY GRANDERSON — HEARING - DEBTOR'S OBJECTION TO CLAIM OF GUY ROBINSON
ET #2 — 8-9-04 [83]

Tentative Ruling: The court incorporates its ruling made in connection with docket control no. ET-1.

32. 04-25264-A-7 JOSE CAMACHO — HEARING - MOTION TO COMPEL TRUSTEE TO ABANDON PROPERTY OF THE BANKRUPTCY ESTATE
LHG #1 — 9-3-04 [12]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the trustee, the United States Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the

record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

33. 04-27468-A-7 STEVEN BEYMER — HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
DGN #1 — 9-13-04 [17]
FORD MOTOR CREDIT CO., VS.

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the moving creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

34. 03-31570-A-7 MICHAEL YANG AND — CONT. HEARING - MOTION TO AVOID JUDICIAL LIEN
AAC #2 SHOUA THAO — 8-17-04 [13]
VS. CHASE MANHATTAN BANK

Tentative Ruling: The motion will be granted.

On October 23, 2003, the debtors filed a petition for relief under chapter 7. John R. Roberts was appointed as the chapter 7 trustee. The debtors received their discharge on January 22, 2004.

On December 20, 2002, a judgment was entered against the debtors in favor of Chase Manhattan Bank for the sum of $17,763.39. The Abstract of Judgment was recorded with the Sacramento County Recorder's Office on September 17, 2003. That lien attached to the debtors' real property located at 7303 Luther Drive, in Sacramento, California.

The debtors move to avoid the lien on the real property pursuant to 11 U.S.C. § 522(f)(1)(A). The debtors have claimed an exemption on this property pursuant to Cal. Civ. Proc. Code § 703.140(b)(1). The debtors valued the property at $235,000. The mortgages and unavoidable liens against the property total $175,000, leaving $60,000 in equity. The debtors exempted $60,000 of equity.

Pursuant to 11 U.S.C. § 522(f)(1)(A), the debtors may avoid the fixing of a lien to the extent the lien impairs an exemption. Here, the lien impairs the debtors' homestead exemption, as there is no equity in excess of the unavoidable liens and the homestead exemption. Therefore, the fixing of the lien will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

Accordingly, the motion will be granted.

35. 01-26876-A-11 GOLD HARVEST MARKET, INC. — HEARING - PLAINTIFF'S MOTION TO SET TRIAL
02-2212 JPG #2 — 8-3-04 [59]
GOLD HARVEST MARKET, INC., VS.
JAMES KIDDER

Final Ruling: The motion is continued to the court's status conference calendar on October 20, 2004 at 10:30 a.m.

36. 03-21483-A-7 JOSEPH/LAURA PALLATIN — HEARING - TRUSTEE'S MOTION TO APPROVE COMPROMISE WITH DEBTORS 8-27-04 [85]
MFB #1

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the debtor, the creditors, the United States Trustee, and all other potential respondents to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of these respondents are entered and the matter will be resolved without oral argument.

The debtors filed a voluntary petition under chapter 13 on February 10, 2003. The case was converted to a petition under chapter 7 on September 8, 2003. Michael F. Burkart was appointed as the chapter 7 trustee.

The trustee maintains that various assets under the control of the debtors are in fact the property of the estate that must be turned over to the trustee. After discussions with the debtors' counsel, the trustee sent a written demand for assets including: a 1999 Toyota Camry valued at $10,510 and subject to a secured loan in the amount of $1,050 and a claimed exemption in the amount of $1,900; a 1985 Toyota Camry valued at $1,800; 49.198 shares of Fundamental Investors valued at $1,088.47; a utility deposit with PG&E in the amount of $500; and undisclosed income tax refunds totaling $5,439 received post-petition.

After asserting defenses to the turnover of these assets, the debtors agreed to resolve their dispute with the trustee. Under their compromise:

1) the debtors agree to pay the sum of $7,000 to the estate, within 24 hours after execution of this agreement in order to satisfy all claims being asserted by the trustee;

2) the debtors waive any and all rights they may have to file amendments to their Schedule C claiming any further exemptions or modifications;

3) the debtors will be entitled to retain all non-exempt assets presently in their possession and under their control, such as cash on hand, vehicles, mutual fund shares, utility deposits, and income tax refunds, and the assets will be deemed immediately abandoned to the debtors; and

4) all of the funds held by the estate will be retained by the trustee for distribution to unsecured creditors in accordance with 11 U.S.C. § 726, and the debtors waive any and all claims objections and legal actions of any kind against the trustee and the estate.

The compromise will be approved. On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed.R.Bankr.P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

Here, the trustee asserts that the additional $7,000 payment will allow the estate to make a 32% dividend payment on all valid unsecured claims. In addition, the execution of the compromise will expedite the administration of the estate.

The court finds the compromise to be fair and equitable and in the best interest of the creditors. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion is granted.

37. 03-33084-A-7 LEE/JACQUELINE JOUL
NR #5

HEARING - FIRST AND FINAL APPLICATION OF NAKAGAWA & RICO FOR ALLOWANCE OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES ($6,162.50 FEES; $187.07 EXP.) 8-19-04 [59]

Final Ruling: This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the debtor, the United States Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The debtors filed a voluntary petition for relief under chapter 7 on December 4, 2003. Prem N. Dhawan was appointed as the chapter 7 trustee. On March 19, 2004, the court entered an order approving the employment of the movant, Nakagawa & Rico, as general counsel for the trustee.

The movant has filed its first and final application for approval of compensation. This application covers the period February 23, 2004 through August 17, 2004. The sought compensation consists of $6,162.50 in attorney's fees and $187.07 in costs, for a total of $6,349.57.

The movant provided necessary services to the trustee including: 1) reviewing and discussing with the trustee various documents, extension deadlines, tax issues, case status, and administration issues ; 2) discussing with the trustee and researching exemptions regarding assets of the estate, and preparing requests for documentation for the debtors' attorney; 3) reviewing and preparing documents related to the disposition of the assets of the estate; 4) preparing and discussing employment and fee applications; and 5) reviewing claims.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The court finds that the services performed were necessary and benefitted the estate. Furthermore, no one has objected to this motion.

However, while the court approves the fees and authorizes the trustee to pay them, the court does not order the trustee to pay them at this time. This is to give the trustee the maximum flexibility in determining whether the estate is administratively solvent. If the trustee concludes the estate is administratively solvent, he may pay the fees now. Otherwise, he may wait

until the final report is approved before paying the fees with other expenses of equal priority in a manner consistent with 11 U.S.C. § 726.

38. 04-25492-A-7 JAVIER CORONA
SMR #1

HEARING - MOTION FOR EXTENSION OF TIME TO FILE DISCHARGE AND DISCHARGEABILITY COMPLAINTS
8-17-04 [5]

Final Ruling: The motion will be dismissed without prejudice.

The notice of hearing sets the hearing on September 22 in the wrong courtroom. Even though contacted by the clerk's office on August 25, the movant failed to serve an amended notice hearing giving the correct hearing information to the respondent.

39. 04-28696-A-7 PAMELA PALMIERI

HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS
9-2-04 [6]

Tentative Ruling: The petition will be dismissed.

The debtor filed a voluntary petition for relief under chapter 7 on August 25, 2004. The debtor failed to file the following required documents: Summary of Schedules, Schedules A-J, Statement of Financial Affairs, Disclosure of Attorney Compensation, Master Address List, and Statement of Social Security Number. The debtor has failed to discharge the duty imposed by 11 U.S.C. § 521(1).

40. 04-28696-A-7 PAMELA PALMIERI

HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS
9-2-04 [5]

Tentative Ruling: The petition will be dismissed.

The debtor filed a voluntary petition for relief under chapter 7 on August 25, 2004. The debtor failed to file the following required documents: Summary of Schedules, Schedules A-J, Statement of Financial Affairs, Disclosure of Attorney Compensation, Master Address List, and Statement of Social Security Number. The debtor has failed to discharge the duty imposed by 11 U.S.C. § 521(1).

41. 04-26698-A-7 DANDREA GRAFF
BLL #1

HEARING - TRUSTEE'S MOTION FOR ORDER AUTHORIZING EMPLOYMENT OF SPECIAL COUNSEL FOR TRUSTEE
8-25-04 [7]

Tentative Ruling: The motion will be granted.

The debtor filed a voluntary petition for relief under chapter 7 on June 30, 2004. John W. Reger was appointed as the chapter 7 trustee. The trustee believes that the debtor has failed to disclose assets, such as a potential community interest in her spouse's professional practice.

The trustee seeks approval to employ Byron Lee Lynch as his attorney, on a 33

1/2% contingency fee basis. The trustee requests Mr. Lynch's representation in order to investigate and recover for the estate any hidden assets. Mr. Lynch's representation will be limited to the assets the debtor has not disclosed or come under the control of the trustee without the assistance of counsel.

Subject to court approval, 11 U.S.C. § 327(a) permits a trustee to employ an attorney to assist the trustee in the administration of the estate. Such attorney must "not hold or represent an interest adverse to the estate, and [must be a] disinterested [person]." 11 U.S.C. § 327(a). 11 U.S.C. § 328(a) allows for such employment "on any reasonable terms and conditions . . . including on a contingent fee basis."

The court finds that the terms of employment and compensation are reasonable. Mr. Lynch is a disinterested person within the meaning of 11 U.S.C. § 327(a) and does not hold an interest adverse to the estate. Moreover, no party opposes the motion. Accordingly, the motion will be granted.

42. 03-29099-A-11 NELLY HARRIS
FEC #17

CONT. HEARING - OBJECTION TO CLAIM OF DEBRA PINASCO, PERSONAL REPRESENTATIVE OF THE ESTATE OF WAYNE HARRIS
6-29-04 [179]

Final Ruling: The objecting party has voluntarily dismissed the objection.